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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

CHAIRMAN'S SUMMARY OF DISCUSSIONS

Addendum

Revised draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany

(LOS/PCN/SCN.4/WP.5/Rev.1)

1. At the ninth session of the Preparatory Commission, Special Commission 4, during its 142nd to 143rd meetings, began the examination of the revised draft of the Headquarters Agreement (LOS/PCN/SCN.4/WP.5/Rev.1). It concluded the consideration of that document during the 146th to 153rd meetings, at the tenth session of the Preparatory Commission.

2. When the Special Commission was first undertaking the examination of the redraft (LOS/PCN/SCN.4/WP.5/Rev.1), the Secretary reminded the delegations that the issue of cooperation and relationships between the United Nations and the International Tribunal for the Law of the Sea had already been discussed at the fifth and sixth sessions of the Special Commission. In that regard, he referred them to documents LOS/PCN/SCN.4/L.10/Add.1, LOS/PCN/SCN.4/L.11 and LOS/PCN/SCN.4/L.11/Add.1. He stated that the new revised paper attempted to reflect an overview of the issue with a spirit of compromise. He stated that he would be ready to answer their questions with regard to the new document.

3. It was suggested that the document be examined article by article, although in the course of the discussions delegations agreed to try to be swift in the examination of the draft paper.

Article 1. Use of terms

4. With regard to that article, it was pointed out that only subparagraph (h) was a new provision. It was approved that "the Government of Germany" would be said instead of "the Federal Republic of Germany" because of the recent reunification of the two Germanys.

5. The Commission also took the opportunity to approve all the other subparagraphs ((a)-(p)).

Article 2. Juridical personality of the Tribunal

6. This article was generally approved as a whole.

Article 3. The Headquarters district

7. The Secretary introduced this article, by stating that the previous paragraph 4 had been deleted as requested. The article had only been edited to reflect the deleted paragraph in a concise manner.

8. Although one delegation requested that it be stated in a clear manner that the seat of the Tribunal would be the City of Hamburg, it was agreed not to add anything to the article since the City of Hamburg was mentioned in the Preamble.

9. The Commission generally agreed on the title of the article, its two paragraphs and subparagraphs.

Article 4. Law and authority in the Headquarters district

10. Since there were no fundamental changes to the article, article 4, together with its six subparagraphs, was generally approved by the Commission as a whole.

Article 5. Inviolability of the Headquarters district

11. The Secretary stated that the changes with regard, in particular, to paragraph 1 were the reflection of the discussions as contained in document LOS/PCN/SCN.4/L.11. It had been suggested that the President of the Tribunal should not have the whole responsibility to restrict the entrance of "outsiders" to the Tribunal premises. In the new paragraph, the Acting President could also do so.

12. The paragraph, as redrafted, was generally approved by the Commission.

13. With regard to paragraph 2, some delegations were opposed to the notion of the Registrar carrying out judicial actions. They insisted that the Registrar was an administrative entity and was therefore inadequately accorded too much power.

14. Some other delegations were of the view that the Registrar and the President were acting in this instance as the representatives of the Tribunal. One delegation pointed out that, traditionally, the Secretary-General, and not the President of the General Assembly, for example, was the one to fully represent the international organization despite his being an administrative instance. He insisted to retain the paragraph as it stood.

15. It was suggested either to delete the reference to the Registrar or to say instead "the President or his designates". Other suggestions were to add "or acting President" or "the President or other persons appointed by him".

16. It was also suggested to examine the practice of the International Court of Justice vis-à-vis the Netherlands. In the end, it was agreed to retain the paragraph pending further consultations on the matter, in paragraph 2 as well as paragraph 3.

17. One delegation, although recognizing that paragraph 5 was in accordance with international law, expressed the wish that it be made clearer that the Tribunal could not grant, in any case, asylum for political reasons. However, he still agreed on the paragraph as it stood.

Article 6. Vicinity of the Headquarters district

18. It was pointed out that the wording "reasonable steps" used in paragraph 1 was too vague.

19. It was suggested to say instead "measures", which was the wording used in the other language versions. It was agreed to bring the English, the original version, into line with the other language versions which, in this case, were more accurate.

Article 7. Protection of the Headquarters district

20. Two issues were raised with regard to this article. One delegation stated that, as in article 6, instead of "whatever action", the word "action" should be replaced by "measure" and thus be harmonized with the other language versions. Another delegation disapproved and suggested, on the contrary, to repeat here the original version in article 6, i.e., "all reasonable steps".

21. The other issue raised was with regard to the consent by "the Tribunal". Some delegations wanted the notion of the Tribunal to be more targeted i.e., the President or Acting President, etc. Another delegation's suggestion was deemed contrary to the definition of the Tribunal found in article 1.

22. In that regard one delegation warned the Commission that it should take into consideration the different cases involved in the different articles. He stated that in paragraph 5 there was a kind of urgency, while in paragraphs 7 and 8 there was the non-urgent threat of dispossession, on the one hand, and of loss of buildings, on the other.

23. In the end, it was generally agreed to accept the text of paragraph 1 with the wording "consent of the Tribunal" remaining, with the substitution of the word "action" by "measures".

24. With regard to paragraph 3, one delegation suggested to say "... shall provide the policy and the security forces ...". This was generally agreed upon by the Commission.

Article 8. Property

25. The Secretary reminded the delegations that article 8 was a slightly modified version of article 12 moved to this position, as this had been requested and approved by the Commission.

26. He pointed out, however, that there was a substantive change in paragraph 1 with the wording "should be explicitly formulated by the President of the Tribunal". He clarified that this wording could be found in the Headquarters Agreement between the United Nation and the United States of America.

27. In this end, this article, with the modifications stated above, was generally agreed upon as a whole.

Article 9. Public services in the Headquarters district

28. Since the article was only a redraft of the previous article 8 moved to this position and with no substantial change, the Commission agreed on it.

Article 10. Communications facilities

29. The Secretary stated that the article was a redraft of the previous article 9 (LOS/PCN/SCN.4/WP.5/Part I).

30. One delegation noted with satisfaction that the Tribunal would enjoy the same facilities as given to an international organization. In that regard he suggested that "international organizations" be replaced by "intergovernmental organizations". He explained that this terminology would be more accurate since "international organizations" could imply also non-governmental organizations.

31. Other suggestions were made but in the end it was agreed to keep the wording used in paragraph 1, but to revert to article 1 ("Use of terms") and include in the definition of international organization the same definition as in the Vienna Convention, i.e., "intergovernmental organization".

32. Another delegation was of the view that in paragraph 1 the term "international treaties" should be used instead of "agreement", because a treaty covered all kinds of agreements.

33. The Commission agreed on the substitution. Article 10 was therefore generally agreed upon with the above change.

Article 11. Flag and emblem

34. This article, together with its footnote, was generally approved by the Commission.

Article 12. Archives

35. It was suggested that the words "in the host country" be used in order to be consistent with article 8. Article 12 together with this change was generally agreed upon.

Article 13. Social security and pension funds

36. The Secretary reminded delegations that there had been numerous discussions on this article as contained in document LOS/PCN/SCN.4/L.11. The present article was an attempt to accommodate some of the views expressed.

37. To the question as to why it had been necessary to include such an article on social security and pension funds it was answered that Germany, the host country, had requested it. The Secretary also added that there was a pension scheme within the United Nations. For the Tribunal, it had been necessary to include a social security scheme because otherwise the Tribunal officials would have neither the one nor the other. In that regard, delegations were also referred to LOS/PCN/SCN.4/WP.9/Add.1.

38. In the end, the article was generally approved by the Commission.

Article 14. Exemption from taxation, customs duties and import or export restrictions

39. The Secretary stated that this article was former article 15 and that it had been patterned, inter alia, after the provisions of the International Atomic Energy Agency (IAEA) Headquarters Agreement.

40. The article was generally approved by the Commission as drafted.

Article 15. Freedom from currency restrictions

41. The Commission generally approved the article as it stood.

Article 16. Privileges, immunities, facilities and prerogatives

42. Since it was just a reproduction of former article 17 of document WP.5/Part II, the Commission agreed on it.

Article 17. Members and officials of the Tribunal

43. The Secretary introduced the article by stating that it was about the categories of officials involved in the enjoyment of privileges and immunities.

44. One delegation suggested that the terminology "in general way" be used as it had been used with regard to the enjoyment of privileges and immunities by the officials of the International Court of Justice. The same delegation was of the view that when referring to unmarried children, the phrase "of minor age" should be included.

45. Another delegation suggested that the order of words be reversed and that "facilities and prerogatives" be used, because "prerogatives" might represent privileges and immunities while "facilities" had a meaning of its own.

46. Another delegation suggested that paragraph 3 should contain the phrase "private domestic staff", in accordance with the other language versions and also because this wording was not often utilized.

47. The same delegation insisted upon seeing included in this article a mechanism to waive the immunities of the officials of the Tribunal. He was supported by other delegations.

48. The Secretary explained that since he had consulted with the representative of the International Court of Justice, it had been clarified that there were no provisions on the waiving of the immunities of the officials of the Court. He suggested that the matter be brought up at the meeting of States Parties.

49. Another delegation suggested that paragraph 1 of article 17 be redrafted to say: "subject to the provisions of this agreement, ... shall be consistent, etc.". This would accommodate the suggestion to insert the words "in a general way".

50. Delegations generally agreed on the above change in the same manner as they had also agreed to reverse the order of the words "privileges and facilities", as described above.

51. With regard to the comment on unmarried children of minor age, it was concluded that the issue should remain open until it was again taken up in the consideration of the protocol on privileges and immunities (LOS/PCN/SCN.4/WP.6 and Rev.1).

52. With regard to the other suggestions as described above, it was generally agreed to attempt to bring all the language versions into concordance.

Article 18. Ad hoc members and experts appointed under article 289 of the Convention

53. The article was generally approved as a whole by the Commission.

Article 19. Agents representing parties, counsel and advocates appearing before the Tribunal

54. One delegation was of the view that paragraph 1 should reflect a broader understanding of the privileges and immunities in order for the concerned authorities and the Tribunal to be well protected against the violation of documents and papers. He insisted that the parallelism of forms should be respected since the issue had already been discussed with regard to document WP.6.

55. He therefore requested the removal of the sentence in paragraph 1 (c) containing the words "relevant to the exercise of their functions".

56. The Commission agreed to the above deletion. It was also understood that at paragraph 7, the words "competent authorities" referred to the host country.

57. It was agreed that the Secretariat would replace, if necessary, the word "of" by "to" in paragraph 7. With regard to the use of the word "prerogative", a clarification was sought by one delegation. It was stated that the wording was taken from the exchange of letters between the ICJ and the Government of the Netherlands, since there was no headquarters agreement between them.

58. In the end, article 19 was generally agreed upon in its entirety, taking into consideration the above.

Article 20. Witnesses, experts and persons performing missions

59. One delegation suggested that article 20 (1) be merged with article 19 (1). Another delegation suggested that the word "any" be changed to "every".

60. Both suggestions were not agreed upon.

61. Another delegation asked why the persons enumerated in article 20, paragraph 1, did not enjoy "prerogatives". It was stated that they were not diplomats, as in article 19, and that they would only enjoy functional immunities.

62. In the end, article 20 was generally approved as it stood.

Article 21. Nationals and residents of the host country

63. The clarification was made for one delegation that what would be exempt from direct taxation would be the salaries and emoluments paid to the staff members who were nationals or residents of the host country. It was argued that that would lend a certain imbalance to tax emoluments in which every State would have participated.

64. Article 21 was generally approved as drafted by the Commission.

Article 22. Waiver

65. There was some controversy as to this article since some discrepancies were noted at the outset vis-à-vis the relevant article in document LOS/PCN/SCN.4/WP.6 dealing with privileges and immunities. The Secretariat agreed that harmonization of the two texts and the relevant articles in document LOS/PCN/SCN.4/WP.5/Rev.1 would have to be undertaken for a better consideration of the issue of waiver.

66. Despite the above, it was deemed necessary to discuss article 22 so that further considerations by delegations might help the Secretariat in its changes to the document. To that end, it was agreed that the article would be examined paragraph by paragraph.

Paragraph 1

67. Some delegations suggested deleting the words "and the Tribunal", since the Tribunal could not be involved in the waiver of the immunities of an official from a State party. In further consideration of the paragraph it was pointed out that the difficulties encountered by delegations were attributable to the confusion between the officials referred to under article 19 and article 20.

68. It was therefore agreed to use instead the wording from article 16 of the Protocol on privileges and immunities and to draw a distinction between the two categories.

69. Another delegation suggested that the reference to article 20 ("and 20") be deleted altogether. But in the end it was agreed that, taking into consideration article 67 of the rules of procedure of the Tribunal, it would be more accurate to specify "article 20, paragraph 2".

70. It was then concluded that paragraph 1 of article 22 was generally agreed upon by the Commission with the agreed delegation of the words "and the Tribunal" (third line), and with the addition of "20 and paragraph 2".

Paragraph 2

71. One delegation, referring to a paper circulated by another delegation, suggested that "the two-third majority" be used instead of "unanimous decision of its available members". It was also suggested that, with regard to the change in paragraph 1, paragraph 2 should be harmonized with the phasing-in provisions of the Tribunal as contained in LOS/PCN/SCN.4/WP.8.

72. It was argued that since the matter of a waiver was an important one, it should be required to have at least 14 of the 21 Members available (i.e., two thirds), although the quorum required to constitute the Tribunal is only 11 Judges.

73. Taking into consideration the remark that in any case paragraph 2 of article 22 would have to be compared to article 2 (d), one delegation suggested deleting the word "unanimous" and adding the notion of "a two-thirds majority of its membership".

74. In the end it was decided to postpone any decision on the paragraph pending the consideration of written proposals and consultations on other documentation by the Secretariat.

Paragraph 3

75. Delegations agreed that the remarks on paragraph 2 applied also to this paragraph.

Paragraph 4

76. It was suggested that reference be made in this paragraph to article 20, paragraphs 1 and 3. It was also pointed out that the same remarks on paragraphs 2 and 3 applied to this paragraph as well.

Paragraph 5

77. One delegation wanted to know why the Registrar, and not the President, was given the authority to waive the immunities of the staff.

78. It was pointed out that, as in the ICJ, the Registrar was the one who usually performed this function. In that regard, and in reference to document LOS/PCN/SCN.4/WP.6/Rev.1, the Deputy Registrar was to be considered in the same manner as the Registrar.

79. At the end of the consideration of article 22, one delegation made a general statement on the whole article. He requested that the balance between the waiving of immunities be respected. He suggested in that regard that there be an additional paragraph or article, which would take care of article 8 of the statute. This article would state that "no member of the Tribunal may participate in the decision of any case in which he had previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court or Tribunal, or in any other capacity".

80. One delegation opposed this addition.

81. The Secretary, in reference to the question raised with regard to the majority waiving the immunities of the officials (art. 32, para. 2), stated that in the case of the European Court, the Court had the right to waive the immunities of its officials if the Community interest was not at risk. But he stated that this would occur rather in the case of an administrative function than a judicial one.

82. In that case, the question was raised as to what would be the majority to be involved for a functional immunity? A solution to this problem was drawn from document LOS/PCN/SCN.4/1991/CRP.41 and could be found in the text of article 22, paragraph 2. But the question remained of the unanimity to be required in the case of the phasing-in of the Tribunal having less than 21 Members.

83. With regard to the question raised by the phrase "... would impede the cause of justice and can be waived without prejudice to the administration of justice ..." (art. 22, para. 5), the Secretary stated that a consensus had

already been reached 1/: to refer to article 4, section 14, second sentence, of the Convention on the Privileges and Immunities of the United Nations. The new sentence took into consideration both the law of Germany and the administration of justice by the Tribunal.

84. In conclusion, he stated that immunities could only be waived if they impeded the course of justice and if they could be waived without prejudice to the purpose for which they had been accorded.

85. Some delegations agreed to the explanations given by the Secretariat and were of the view that a redrafting, taking into account the explanation given, would resolve the ambiguity in paragraph 5.

86. With regard to the question of the phasing-in period, suggestions to establish two criteria for the different periods were rejected. An ad hoc working group suggested deleting in paragraphs 2 to 4 the phrase "which includes a two-thirds majority of its membership".

87. The suggestion was approved.

88. The Commission generally approved article 22 with the above changes.

Article 23. Laissez-Passer, identity cards and notifications

89. The same issue was again raised as to the independence of the Tribunal vis-à-vis its ability to issue its own laissez-passer, or if it would be preferable to use the United Nations laissez-passer. Some delegations considered that the Tribunal should benefit from the United Nations in the same manner as did other organs under the Convention.

90. One delegation expressed reservations with regard to the above suggestion and proposed the inclusion of a footnote to article 23 referring to article 18 of document LOS/PCN/SCN.4/WP.6/Rev.1 which deals with the use of the United Nations laissez-passer.

91. In the end, paragraph 1 of article 23 was agreed upon with the addition of a footnote. The Commission, however, also took note of the reservations of some delegations.

92. With regard to paragraph 2, one delegation raised the issue of "stateless persons", and particularly witnesses without a nationality.

93. It was agreed that a sentence in this paragraph containing a reference to the Convention on stateless persons should resolve that issue.

94. Article 23 was generally agreed upon by the Commission taking into account the above considerations.

Article 24. Entry, transit and sojourn in the host country

95. One delegation requested that the Spanish version of the article be brought in line with the English version, and in particular with regard to the translation of "host country". He suggested that the words "país anfitrión" be used. This suggestion was supported by other delegations.

96. Another delegation suggested that paragraph 2 should refer to articles 17 to 20 or that paragraph should be merged with paragraph 1.

97. Article 24 was generally approved in its entirety along with the agreed harmonization and stylistic changes.

Article 25. Security

98. It was suggested that the words "host country" be used instead of "Federal Republic of Germany". This suggestion was approved.

99. Article 25 was generally accepted by the Commission, with the above change.

Article 26. Responsibility, liability and insurance

100. Article 26 was generally approved with the change accepted under paragraph 25.

101. It was further approved that the expression "host country" would be used throughout the text whenever reference would be made to Germany.

Article 27. Cooperation with the competent authorities

102. One delegation considered that paragraph 1 of the article was quite vague.

103. The Secretary responded that the purpose of the text was to provide an opportunity for cooperation between the Tribunal and the host country. He insisted that it was a provision common in all headquarters agreements.

104. Another delegation wanted to know why reference was only made to experts under article 289 of the Convention, and not to other categories of experts.

105. It was stated that the other categories of experts were referred to elsewhere, such as in articles 18, 20 and 22. The terminology was inspired from the Convention and article 27 dealt exclusively with the experts that were treated almost as ad hoc Judges or assessors.

106. Another delegation was of the view that article 19 of the Protocol (LOS/PCN/SCN.4/WP.6) was better drafted and should provide the inspiration for this article. But it was explained that the Protocol referred to a limited period of time while document LOS/PCN/SCN.4/WP.5/Rev.1 was drafted on a more permanent basis.

107. In the end, it was generally agreed that article 27 should be adopted in its entirety.

Article 28. Supplementary agreements

108. One suggestion was to merge articles 28 and 31 because the one dealt with drafting additional agreements while the other dealt with amending an existing agreement; the two articles were thus complementary.

109. One delegation opposed the above suggestion because article 28 dealt with an agreement that would give effect to various provisions while article 31 dealt with amendments. He was also of the view that the word "adjusting" in article 28 should be replaced by a better expression.

110. Another delegation supported him and was of the view that the problems in this article lay once again in the use of the word "adjusting". He suggested therefore the following words be used instead: "conclude supplementary agreements to this agreement so far as ...".

111. Other delegations insisted that article 28 should remain separate from article 31 because supplementary agreements were fundamentally different from amendments. It was suggested to simply delete the word "adjusting".

112. In this regard, mention was made of other precedents, such as the headquarters agreement between Kenya and the United Nations Environment Programme (UNEP).

113. In the face of the majority in favour of separate articles, it was agreed to retain article 28 as drafted and to delete the words "adjusting the provisions of" and replace them by "to".

114. Article 28 was generally agreed upon with the above change.

Article 29. Application of the relevant agreements on the privileges and immunities of the Tribunal

115. One delegation was concerned by what would happen if provisions in the Headquarters agreement conflicted with provisions of the Protocol on privileges and immunities when applying to the same subject, since neither provisions should restrict the other. He therefore suggested that the words "deal with the same subject" be deleted and replaced by "apply to a specific case". He was supported by other delegations who argued that the Protocol took precedence over the Headquarters agreement.

116. Another delegation argued that the second part of the article was unnecessary and that therefore the article should end after the word "Protocol".

117. One delegation was of the view that since both texts were complementary, he suggested the use of the word "complementary" instead of "supplementary".

118. It was then argued that the Headquarters agreement should prevail in case of conflict.

119. In the end, the Commission had to decide between two different suggested alternatives. The first alternative would give precedence to the Headquarters agreement over the Protocol, and read as follows:

> "The Provisions of this Agreement shall be considered supplementary to the provisions of the Protocol. When a provision of this Agreement and a provision of the Protocol are applicable to the same specific case, both provisions shall be considered complementary wherever possible; both of them shall be applied and neither shall restrict the force of the other. Nevertheless, in the event of a conflict, the provision of the present Agreement shall prevail."

120. The second alternative, on the other hand, would read as follows:

> "The provisions of this Agreement shall be considered supplementary to the provisions of the Protocol. When a provision of this Agreement and a provision of the Protocol deal with the same subject, both provisions shall be considered complementary wherever possible; where this is not possible, the provisions of the Protocol shall prevail."

121. To help the Commission decide, reference was made by the Secretary to various other documents: section 29 of the Agreement between the United Nations and the United States of America; section 41 of the Agreement between UNEP and Kenya; section 41 of the Agreement between the United Nations Industrial Development Organization (UNIDO) and Austria; and section 26 of the Agreement between the United Nations University (UNU) and Japan. These reference documents tended to refute the objection made by one delegation that the second proposal would be attempting to grant the host country sovereignty.

122. One delegation argued that in a case of conflict no text should be superior to the other. It should be left to the host country and the Tribunal to deal with the matter without prejudice to a member State.

123. Another delegation insisted that it should be up to the Commission to see to it that no conflict arose between the two texts. In that regard it was suggested to postpone any decision on the article until the text of the Protocol had been examined in its entirety.

124. Finally, after the intervention of a representative of the Group of 77, advocating that the Headquarters agreement should prevail over the Protocol, it was generally agreed that the article would be drafted as in article 55 of the Agreement between the Authority and Jamaica. 2/ However it was requested that a restrictive approach be adopted when granting privileges and immunities. It should be made certain that a general agreement did not derogate inordinately from detailed provisions. An effort should be made to include similarities in both texts.

Article 30. Settlement of disputes

125. One delegation asked what the practice was between the ICJ and the Government of the Netherlands.

126. Another question was raised concerning the fact that there was no mention of applicable law in the article; what law would then be applied to resolve disputes, the German or international law?

127. One delegation was of the view that, with regard to the latter question, German law should apply for paragraph 1 (a) and a compromise between German law and international law to paragraph 1 (b).

128. In the end, the Secretary pointed out that the text in article 30 only called for arbitration in case of a settlement of disputes between the Tribunal and Germany. Paragraph 2 of the article sought to overcome the time element.

129. Taking into account that point of view, article 30 was generally approved by the Commission.

Article 31. Amendments

130. The Secretary pointed out that there already was a suggestion to move this text and article 28 closer to each other. He noted however that the majority of delegations seemed to be in favour of keeping the articles separate.

131. One delegation insisted that this article contain the full titles of the institutions concerned and not abbreviations, such as "the Tribunal" or "the Government". It was stated that the abbreviated forms were used because of the lengthy nomenclature of both parties. Precedents showed that while there was no headquarters agreement between the ICJ and the Government of the Netherlands, the relevant exchange of letters sometimes referred to the International Court of Justice as "the Court".

132. Other suggestions made by delegations included deletion of the word "only"; replacing the word "Agreement" by "by mutual consent"; and placing the words "host country" before the words "Tribunal". All of them received support, but the latter suggestion was however withdrawn after attention was called to the title of document LOS/PCN/SCN.4/WP.5/Rev.1.

133. Some delegations pointed out that despite the lengthy names of both parties, they should be used in article 31: "the International Tribunal for the Law of the Sea and the Federal Republic of Germany or the host Government".

134. With regard to the suggestion to delete the word "only", the Secretary pointed out that this would leave the option open for anyone to amend the Agreement. Taking this remark into consideration, the suggestion was withdrawn.

135. However, other delegations were of the view that the other suggestion continued to open the possibility mentioned above. The suggestion was to retain the word "only" but also to be more restrictive and add that the amendment should be made "by agreement" or even "written agreement".

136. Finally, it was agreed to say "the provisions of this Agreement may only be amended by agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany".

137. The new article 31 was then generally approved by the Commission.

Article 32. Final provisions

138. One delegation was of the view that the content of the article did not constitute final provisions.

139. The delegate from Germany was of the view that the constitutional law of his country should be taken into account. He suggested a new text that would read as follows:

> "This Agreement shall enter into force following its signature on behalf of the International Tribunal for the Law of the Sea and on behalf of the Federal Republic of Germany, thirty days after the Federal Republic of Germany has notified the President of the Tribunal that the internal constitutional requirements for the entry into force of this Agreement had been fulfilled."

140. It was therefore generally agreed that the title should be changed to read: "Entry into force".

141. A remark was made with regard to provisions of the Vienna Convention on the Law of Treaties allowing for the provisional application of a treaty.

142. It was pointed out that although the Vienna Convention provided for multiple possibilities, it did not do so when there was a need to have recourse to the Parliament. It would not apply, therefore, in the case of the Headquarters agreement under consideration.

143. Another delegation, referring to the rules of procedure of the International Tribunal for the Law of the Sea, wondered if it would be correct to commit the Tribunal in this article.

144. Another delegation argued that a State party to an international agreement should make sure that its domestic law is taken into account beforehand.

145. In the end the Commission generally agreed upon the text suggested above (see para. 139) and as contained in document LOS/PCN/SCN.4/1992/CRP.45. This text had been patterned after the Agreement between the European Molecular Biological Organization and Germany.

146. Another issue was raised concerning the paragraph under article 32 dealing with the final provisions.

147. Some delegations argued that since the Headquarters Agreement was a bilateral agreement, it should also be drafted in French. This remark was raised following a suggestion to state that if a conflict arose between the English and the German versions, the English version would prevail.

148. Another delegation was of the view that this question should be postponed until the issue of languages was taken up.

149. It was clarified that the Vienna Convention on the Law of Treaties, 3/ in its article 33, paragraph 1, stated that "when a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail". It was therefore pointed out that the question of the authenticity of a language was different from the question of which language version would prevail over the other.

150. In the absence of any conclusive decision with regard to the matter, it was decided to adhere to the provisions of the Vienna Convention and include the reference to the French version but otherwise leave the text as it stood. This meant that no stipulation was made as to which language text would prevail in case of a divergence.

151. At the end, it was stated that the Commission had thus concluded its consideration of document LOS/PCN/SCN.4/WP.5/Rev.1.

152. Since it is not possible in the present summary to reflect each and every suggestion made in the course of the debate, the Chairman would appreciate being apprised of matters of consequence not reflected in the summary or in the final text of LOS/PCN/SCN.4/WP.5/Rev.2, as also contained in document LOS/PCN/SCN.4/WP.15/Add.2.

Notes

1/ Ref. LOS/PCN/SCN.4/L.11/Add.1, para. 5.

2/ Ref. LOS/PCN/WP.47/Rev.1.

3/ United Nations, Treaty Series, vol. 1155, p. 331.